

Supplemental Letter of Findings: 04-20191498
Gross Retail Tax
For the Tax Years 2015-2017

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Corporation's tender truck, purchased in 2017, is partially eligible for the agricultural exemption. The tender truck purchased in 2015 is not eligible for the exemption.

ISSUE

I. Gross Retail Tax - Agricultural Exemption.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-5-2; [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); Sales Tax Information Bulletin 9 (January 2019).

Taxpayer protests the imposition of use tax on the purchase of two tender trucks.

STATEMENT OF FACTS

Taxpayer is an Indiana Corporation engaged in manufacturing livestock feed. As the result of an audit, the Indiana Department of Revenue ("Department") found that Taxpayer owed use tax on taxable purchases upon which neither sales tax nor use tax was already paid. The Department therefore issued proposed assessments for use tax for the years 2015-2017. Taxpayer protested a portion of the assessments. The Department held a hearing and issued Letter of Findings 04-20182351 denying Taxpayer's protest. Taxpayer petitioned for a rehearing, which was granted. The rehearing was held and this Supplemental Letter of Findings results. Additional facts will be provided as necessary.

I. Gross Retail Tax - Agricultural Exemption.

DISCUSSION

Taxpayer protests the Department's proposed assessments of use tax for 2015-2017. The Department based those assessments on the Taxpayer's purchase of and repair parts for two tender trucks. Taxpayer argued that the tender trucks were eligible for the agricultural exemption. The Department held an administrative hearing and issued its initial Letter of Findings #04-20182351 ("LOF") denying Taxpayer's protest by referring to both IC § 6-2.5-5-2 and Sales Tax Information Bulletin 9 (2019) Example 6. The Department found that Taxpayer's delivery of feed did not qualify for the agricultural exemption. Taxpayer's argument on rehearing is that its tender trucks and the related repair purchases are exempt from sales tax and use tax under IC § 6-2.5-5-2 and [45 IAC 2.2-5-6](#). Moreover, it contends that the facts align more with Sales Tax Information Bulletin 9 (2019) Example 11.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar*,

Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, the purchase and/or use of tangible personal property is subject to sales or use tax unless an applicable exemption exists.

In the course of the audit period, the statute providing the agricultural exemption was amended twice. Therefore, three different versions of that statute existed in three consecutive years, and each version must be applied to the appropriate year. In 2015, IC § 6-2.5-5-2 provided:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

Effective in 2016, IC § 6-2.5-5-2 was amended and provided:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for the person's direct use in the direct production, extraction, harvesting, or processing of agricultural commodities, *and including material handling equipment purchased for the purpose of transporting materials into such activities from an onsite location.*
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which the person sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

Effective in 2017, IC § 6-2.5-5-2 was amended and provided:

- (a) Transactions involving agricultural machinery, tools, and equipment, including material handling

equipment purchased for the purpose of transporting materials into activities described in this subsection from an onsite location, are exempt from the state gross retail tax if the person acquiring that property acquires it for the person's direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which the person sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(c) Transactions involving agricultural machinery or equipment, including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection from an onsite location, are exempt from the state gross retail tax if the person acquiring the property:

- (1) acquires it for the person's direct use in:*
- (A) the direct application of fertilizers, pesticides, fungicides, seeds, and other tangible personal property;*
or
 - (B) the direct extraction, harvesting, or processing of agricultural commodities;*
- for consideration; and*
- (2) is occupationally engaged in providing the services described in subdivision (1) on property that is:*
- (A) owned or rented by another person occupationally engaged in agricultural production; and*
 - (B) used for agricultural production.*

(Emphasis added).

The emphasized portions of IC § 6-2.5-5-2 cited above indicate the changes from the previous versions. Since the audited years span all three versions of IC § 6-2.5-5-2, each purchase will be evaluated under the version in effect at the time of the transaction.

For all years at issue [45 IAC 2.2-5-6](#) in relevant parts provided:

(a) In general, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. (The exemption provided in this regulation [\[45 IAC 2.2\]](#) extends only to agricultural machinery, tools, and equipment.)

(b) The state gross retail tax shall not apply to sales of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic] agricultural commodities.

(c) Purchasers of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing of agricultural commodities are exempt from tax provided such machinery, tools, and equipment have a direct effect upon the agricultural commodities produced, harvested, etc. Property is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities if the property in question has an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process, i.e. confinement buildings, cooling, heating, and ventilation equipment. The fact that such machinery, tools, or equipment may not touch the commodity or livestock or, by itself, cause a change in the product, is not determinative.

(d) Exempt purchases: (1) Feeds--Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.

...

(f) "Agricultural machinery, tools, and equipment" as used in this regulation [\[45 IAC 2.2\]](#) refers to machinery, tools, and equipment used on a farm to cultivate, grow, produce, reproduce, harvest, extract or process animals, poultry, and crops used to produce food or agricultural commodities for human or animal consumption (or for further use in producing food or agricultural commodities).

...

For all years at issue [45 IAC 2.2-5-7](#) provided:

(a) Agricultural machinery, tools, and equipment directly used in the direct production, extraction, harvesting, or processing of grain, from the time the grain is harvested until the time the grain is dried, are exempt so long as the agricultural machinery, tools, and equipment have an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

--EXAMPLE--

Machinery, tools, and equipment directly used in the processing, drying, or cleaning of grain.

(b) Transportation equipment directly used in the direct production of grain is exempt so long as such equipment has an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

(1) Grain augers which contain perforated cleaning screens are exempt, since this equipment separates foreign matter from grain and, therefore, is an essential and integral part of an integrated process in direct production, which produces grain.

(2) Grain augers without perforated cleaning screens used exclusively to transport wet grain are exempt, since such transportation aerates wet grain and, therefore, has a direct and immediate effect upon the grain and is an essential and integral part of an integrated process which produces grain.

(3) Machinery, tools, and equipment directly used to transport grain from the field where it is harvested to the production processes of drying, cleaning, and holding for the feeding of livestock, or to be further used in the production of food and commodities are exempt.

(c) Wet holding tanks, continuous flow driers, and batch driers are exempt, since these items are integral parts of drying systems and, therefore, such equipment is directly used in direct production of grain.

(d) Grain drying bins. The department has determined that grain drying accessories of a grain drying bin are exempt, since such equipment is used to dry wet grain and, therefore, has a direct and immediate effect upon grain. Alternatively, the department has determined that a grain drying bin's storage structure and parts thereof are subject to tax, since the storage of grain has no direct and immediate effect upon grain.

Regarding Truck A, Taxpayer purchased it in 2015, therefore the version of IC § 6-2.5-5-2 in effect in 2015 is controlling here. At that time, IC § 6-2.5-5-2 only allowed use of the agricultural exemption if the purchaser of the tangible personal property was the owner of the land being used for agricultural purposes and if the tangible personal property was directly used in the direct production of agricultural products. Since Taxpayer is a service provider and did not own the land or livestock being raised on that land, under IC § 6-2.5-5-2 as in effect in 2015, Truck A was not exempt at the time of purchase.

Taxpayer purchased Truck B in 2017, by which point IC § 6-2.5-5-2 had been amended to add subsection (c). Taxpayer is in the feed business and uses Truck B after the feed production is complete. Truck B transports the feed from Taxpayer's facility to its customer's farms and places the feed in front of the animals, as established in picture evidence at the administrative hearing. For all years at issue, under [45 IAC 2.2-5-6\(d\)](#) sales of agricultural machinery used directly in feeding exempt animals, poultry, etc., are exempt from tax. However, that exemption does not extend to machinery used in transportation of feed prior to the actual feeding process. That feeding process includes actions where the feed is placed in front of the animals to eat. Truck B has a modified arm that extends to deposit the feed into bins for Taxpayer's customers. Taxpayer provided picture verification that Truck B sometimes deposits the feed directly into the bin where the animals feed from. All of Taxpayer's customers pay for the feed, own or rent property that is used for agricultural production, and are occupationally engaged in agricultural production, as required in IC § 6-2.5-5-2(c).

Truck B also will transport the feed from Taxpayer's manufacturing facility to its customers' farms and deposit it into storage bins. Since storage bins do not directly feed the livestock, depositing feed into storage bins does not qualify for the exemption provided under IC § 6-2.5-5-2(c)(1) and [45 IAC 2.2-5-6\(d\)](#). Thus Truck B is partially exempt. Since there is no documentation establishing the actual time Truck B was used in an exempt manner, the Department will consider Truck B and any repair parts purchased for it as fifty percent taxable and fifty percent exempt. Further, while Truck A was taxable at the time it was purchased, due to the change in IC § 6-2.5-5-1 effective in 2017, repair parts purchased for Truck A in 2017 will also be considered as fifty percent taxable and fifty percent exempt.

Sales Tax Information Bulletin 9 (2019) in relevant part provides examples of agricultural machinery, tools, equipment, and buildings used directly in direct production and are thus exempt. However, the tax years at issue are 2015, 2016, and 2017, thus Sales Tax Information Bulletin 9 (2019) is not applicable. During the tax years at

issue, Sales Tax Information Bulletin 9 published in 2015 and 2017 applied. Neither the 2015 nor 2017 different versions of Sales Tax Information Bulletin 9 contemplate the issue Taxpayer and the Department attempted to address in Letter of Findings #04-20182351. Therefore, Sales Tax Information Bulletin 9 (2019) will not be relied on in this Supplemental Letter of Findings. Rather, the statutes and regulations from 2015 through 2017 govern this issue.

In conclusion, the different versions of IC § 6-2.5-5-2 in effect during the audit years lead to the conclusion that Taxpayer's tender truck purchases in different years have different taxable status. Truck A was not exempt under IC § 6-2.5-5-2 as in effect in 2015. However, Truck B, plus repair parts purchased in 2017 for both Truck A and Truck B, are 50 percent exempt under IC § 6-2.5-5-2(c) as in effect in 2017. The Department notes that, since Taxpayer is now aware of the requirements of IC § 6-2.5-5-1 regarding taxable and exempt use of its tender trucks, from this point forward documentation is required to prove exempt uses under IC § 6-2.5-5-2.

FINDING

Taxpayer's protest is sustained in part and denied in part.

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